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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,088	03/18/2002	Michael G. Cousin	1202.03	6422

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SMITH & HOPEN PA  
15950 BAY VISTA DRIVE  
SUITE 220  
CLEARWATER, FL 33760

EXAMINER

MITCHELL, KATHERINE W

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/063,088

Applicant(s)

COUSIN ET AL.

Examiner

Katherine W Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 4-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 10 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims 4-9 drawn to an invention nonelected without traverse in Paper No. 4. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on 2/20/2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of USP 6401488 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Objections***

3. Claim 3 is objected to because of the following informalities:

Applicant has amended to add details of the "strung bean". A strung bean would lack antecedent basis; examiner is assuming applicant intended --strung bead--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faris (USP 5138855).

Faris discloses pop bead construction substantially as claimed:

wherein said pop bead construction comprises: a body (14) formed of an opaque material; an elongate, flexible neck (10) formed integrally with said body, said elongate, flexible neck extending radially from said spherical body; a ball (12) formed integrally on a distal free end of said elongate, flexible neck; a socket (16) formed in said body; said socket including a cavity and an opening into said cavity, said opening formed on a surface of said spherical body in diametrically opposed relation to said elongate flexible neck; said opening having an initial breadth slightly less than a breadth of said ball; said body being formed of a flexible and resilient material so that said opening momentarily enlarges to admit said ball into said cavity when said ball is pressed thereinto and said opening returning to said initial breadth to capture said ball in said cavity after said ball has passed through said opening; said elongate, flexible neck having a predetermined length sufficient to enable said ball formed on said distal end of said elongate, flexible neck to be inserted into said cavity formed in said body from which said elongate, flexible neck extends, see Fig. 2., said ball being enclosed within said spherical body and therefore not visible to a viewer of said pop bead construction, see Fig. 7., said pop bead forming a jewelry item of generally annular construction when said ball is disposed within said cavity, see Fig. 1, said spherical body and said elongate, flexible neck being the only visible parts of said jewelry item when said ball is fully received within said spherical body, see Fig. 7.

However, Faris fails to disclose the shape of the body containing the socket as being spherical. However, the applicant is reminded that a change in the shape of a

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prior art device is a design consideration well within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Faris' body with a spherical shape since changing the shape of a prior art device requires only a routine skill in the art.

Re claim 2: Faris discloses a strung bead (i.e., the key shown in Fig. 3) disposed in engaging relation to said elongate, flexible neck; each strung bead having a diametrically-extending throughbore formed therein, each of said throughbore having a diameter greater than a diameter of said ball so that said strung bead is positionable onto said elongate, flexible neck and each of said throughbore having a diameter less than a diameter of said spherical body so that said strung bead is captured between opposite sides of said spherical body when said ball is disposed within said cavity.

However, Faris fails to disclose a plurality of strung beads. The applicant is reminded that duplicating the components of a prior art-device is a design consideration within the skill of the art. In re Harza, 274-F.2d 669, 124 USPQ 378 (CCPA 1960). Therefore, as customary, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Faris with a plurality of key (i.e., strung beads) to securely retain all keys in one location if a large number of keys were anticipated, for example, as in a baby rattle toy.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (U.S. Patent No. 4,044,725) in view of Charles USP 2714269.

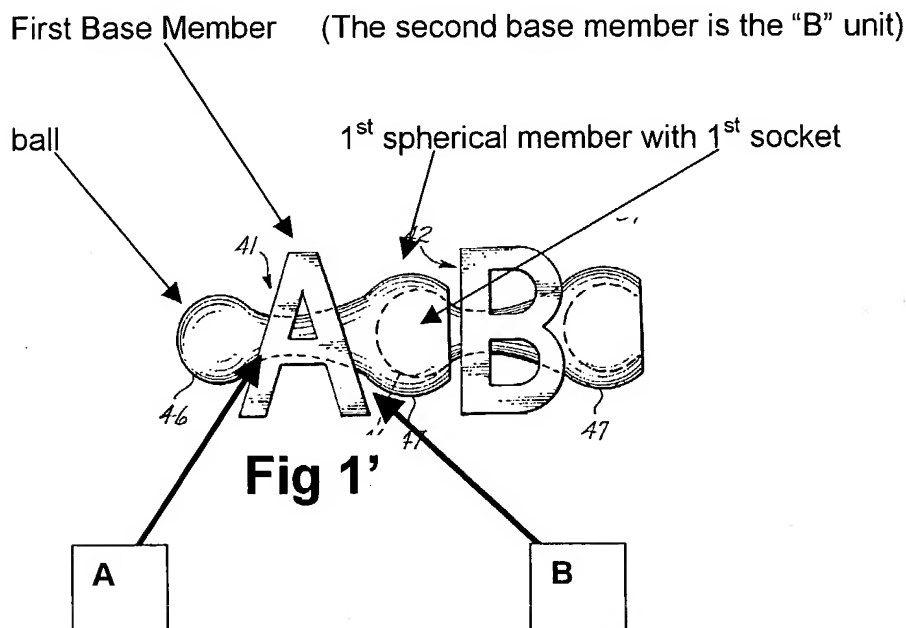
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Re claim 10: Miller discloses a pop bead construction in combination with a first (41) and second base (42) member comprising:

a first truncate neck (A in Fig. 1' - See examiner's Fig 1' below.) extending from a first side of said first base member at an upper end of said first base member; a ball (46) formed in a distal free end of said first truncate neck; a second truncate neck (B in Fig. 1' - See examiner's Fig 1' below.) extending from a second side of said first base member (41) at an upper end of said first base member, a first spherical member formed on said second truncate neck at a distal free end thereof; a first socket formed in said first spherical member, See Fig. 7 of Miller; a third truncate neck extending from a first side of said second base member at an upper end of said second base member; a ball formed in a distal free end of said third truncate neck; a fourth truncate neck extending from a second side of said second base member at an upper end of said second base member; a second spherical member formed on said fourth truncate neck at a distal free end thereof; a second socket formed in said second spherical member; said second socket adapted to releasably receive said ball formed in said distal free end of said first truncate neck; said first and second truncate necks and said first socket being formed in said first base member at said upper end thereof so that said first base member depends from respective innermost ends of said first and second truncate necks; said third and fourth truncate necks and said second socket being formed in said second base member near said upper end thereof so that said second base member depends from respective innermost ends of said third and fourth truncate necks; each of said first and second base members formed in the shape of a symbol; whereby a chain

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of symbols is formed when said ball formed in said distal free end of said first truncate neck is in engaging relation to said second socket formed in said second spherical member. See Fig 1' below.



However, Miller does not teach that the truncate necks are of a uniform diameter along their necks. Charles teaches a pop bead with a uniform diameter truncate neck in Figs. 1-7. Note that Fig 4 and col 2 lines 47-56 shows a pop bead assembly with a very elongated separate truncated neck with balls on both ends adapted to connect to beads with sockets with cavities on both ends, interchangeable with the pop beads having both a socket and a truncate neck on the same bead, and shows multiple beads, each with a truncate neck and socket, strung together in Fig 7. Therefore, as customary, it would have been obvious to one having ordinary skill in the art at the time the invention was

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made to provide Miller with elongated trunks of uniform diameter, as taught by Charles, in order to allowed lengthened connecting necks with a minimum of material if reinforcement at the ball and sphere connector is not required for strength.

***Allowable Subject Matter/Reasons for Allowability***

7. Claim 3 has been objected to as having administrative errors, but would be allowable if rewritten to correct or clarify the claim objections. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

8. Claim 3 has structure including a strung {bead} with a bore with a diameter larger than the truncate neck in combination with the pop beads, and the pop bead structure, including the elongated truncate neck with uniform diameter, ball and socket connectors, and strung beads of uniform diameter greater than neck diameter, are critical in allowing users to combine pop beads and conventional strung beads to form unique jewelry.

***Response to Arguments***

9. Applicant's arguments filed 2/20/2004 with respect to claims 1-2 have been fully considered but they are not persuasive. A separate patent application is evaluated independently from any previous applications, especially considering that case law and court interpretations evolve over time. Further, the argument that Faris has connectors 12 and 14 visible in use is not considered valid. Looking at Fig 7 as the connecting detail of Fig 3, the elongated neck includes 12 – the ball connector is considered to be



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34. The entire body of 34 is fully received and hidden when inserted in socket 24 of spherical body 14. Further, it has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

The arguments on the appearance of the letters appearing to hang as opposed to supported mid-height, and the visual appearance of the elongated necks relative to the beads, are concerned with clear design choices.

10. Applicant's arguments, filed 2/20/2004, with respect to claim 3 have been fully considered and are persuasive in view of the amendment and arguments. The rejection of claim 3 has been withdrawn.

11. Applicant's arguments with respect to claim 10 have been considered but are moot in view of the new ground(s) of rejection. Examiner notes that applicant included claim 10 in with the arguments regarding claim 3, but claim 10 does not require or facilitate the capability to combine pop beads and strung beads, and the uniform diameter never provided any criticality in the original specification.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W Mitchell whose telephone number is 703-305-6713. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kwm

~~4/9/2004~~

4/29/04 KM



ROBERT J. SANDY  
PRIMARY EXAMINER